IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEALS No. 451, 452 and 453 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL AGRO SALES AGENCIES

Versus

BALUBHAI KASHIBHAI PATEL

Appearance:

MR SURESH M SHAH for Appellant

MR PM THAKKAR for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 24/09/2002

COMMON ORAL JUDGEMENT

1. These three appeals are directed against the common judgment and decree dated 9th January, 1980 passed

by the learned Civil Judge (S.D.), Rajkot in Special Civil Suits No. 102 of 1977, 103 of 1977 and 104 of 1977 dismissing the said suits.

2. The appellant - plaintiff had filed the said three suits for claiming damages for breach of the contract and for refund of the deposit from the defendants. The plaintiff's case was as follows:

2.1 The plaintiff was a registered partnership firm and was dealing in seeds at Rajkot. The defendants were residents of village Sadhali in Taluka Shinor, District Vadodara. According to the plaintiff, the defendants were intending to sell the seeds of Shankar 4 Cotton and a number of contracts were entered into between the parties on various dates between 20th January, 1977 and 7th February, 1977. The price was Rs.105/- per kilo. The agreements were in writing. In each case, the plaintiff had paid a certain sum as deposit. There was a condition that the delivery of the goods was to be effected when the Government certified and permitted the defendants to sell the seeds and the responsibility to get the seeds certified was of the defendants. It was alleged that the plaintiff was ready and willing to accept the delivery and that the time was the essence of the contract as the seeds were to be delivered before the first rain and they were to be used for cultivation. The plaintiff had been to take the delivery but the defendants told him that they would inform the plaintiff about the time of the delivery but no further information was received by the plaintiff and, hence, the plaintiff made an enquiry by writing a letter dated 26th May, 1977 to which the defendants replied that they will not effect the delivery. According to the plaintiff, at the time when the delivery was to be given, the rate was Rs.175 to Rs.180 per kilo and hence the defendants had intended to commit breach of the contract. It was alleged that the defendants neither replied to the letter nor intimated the plaintiff that they would deliver the goods. The plaintiff, therefore, sent a telegram and had also gone to see the defendants. The plaintiff also sent telegraphic notices on 1st June, 1977 and 2nd June, 1977 and sent his man to take the delivery of the goods. However, the defendants refused to deliver the goods and committed breach of the contract. The plaintiff, therefore, filed the suits, referred to earlier, claiming Rs.11,250/- as damages and Rs.3,100/- as refund of the deposit in Special Civil Suit No.102 of 1977, Rs.15,000 as damages and Rs.4,200/- as the refund of the deposit in Special Civil Suit No.103 of 1977 and Rs.9,375/- as damages and Rs.2,575/- as the refund of the deposit in

3. The defendant in each suit resisted the plaintiff's claim by filing the written statement at Exh.15 and contended that the breach of contract was committed by the plaintiff by not performing his part of the contract. They admitted the quantity to be sold to the plaintiff and the amount of deposit received by them. They alleged that the plaintiff was aware of the uncertainty of getting permission from the Government in respect of the proposed delivery. According to them, it was the plaintiff who had intentionally committed breach of the contract. They denied the plaintiff's claim for damages and refund of the deposit. According to the defendants, they were cultivating Shankar 4 Cotton seeds and selling the same only if the Government certified and permitted them to sell. They also contended that the court had no jurisdiction to try the suit. They also submitted that the suit contract was of a wagering nature.

4. All the three suits were consolidated and tried together since common questions of law and fact arose for decision.

5. A number of issues were raised. However, the main issues were whether the plaintiff was ready and willing to perform his part of the contract and whether it was the defendants who committed breach of the contract and whether the plaintiff was entitled to get refund of the deposit amount. After recording the oral and documentary evidence adduced by the parties, the learned Judge came to the conclusion that the alleged breach by the defendants was not established and since the plaintiff had failed to prove that the defendants had committed breach of the contract, he was not entitled to refund of the deposit.

6. The plaintiff had, therefore, filed these three appeals challenging the judgment and decree of the learned Trial Judge dismissing these suits.

7. Now the oral and documentary evidence on record goes to show that the seeds were to be delivered only after the Government certified them. There was a clause to this effect in the written agreement. The plaintiff Bhanjibhai was under the impression that the Government would certify the cotton seeds in the month of May because the seeds were required to be sown prior to the first rain and the monsoon starts in the last week of May. He was, therefore, under the impression that the

Government must have released the seeds prior to 18th May, 1977. The learned Judge has not believed his evidence that he had gone to see the defendants on 18th May, 1977 with witness Jayantibhai (Exh.70). In his oral evidence, the plaintiff stated that the goods were certified and released by the Government on 25th May, 1977 but that is contrary to what is stated in his letters (Exhs.37, 50 and 57) dated 26th May, 1997. The learned Judge accepted the evidence adduced on behalf of the defendants and came to the conclusion that they came to know from Sardar Ginning Factory on 6th June, 1977 that the goods had been certified and released by the Government. They received their goods on 7th June, 1977 but before that, the plaintiff had already sent telegrams alleging that the defendants had committed breach of the contract and threatening to claim compensation. According to the defendants, they went to Rajkot to deliver the goods on 11th June, 1977 but the plaintiff refused to accept the same. The learned Trial Judge also accepted this part of the evidence.

8. The learned advocate for the appellant took me through the judgment and the oral and documentary evidence on record and contended that the learned Trial Judge had committed an error in recording the finding that the plaintiff had failed to prove that the defendants had committed breach of the contract. However, the learned Trial Judge has given cogent reasons for coming to his conclusion and I agree with his evaluation of the oral and documentary evidence on record. There is no reason to disturb the finding that the breach was not committed by the defendants.

9. However, it was contended by the learned counsel for the appellant that, in any case, the appellant plaintiff was entitled to refund of the deposit which was paid to the defendants in each suit. He drew my attention to Clause 5 of the agreement (Exh.34). The said clause provided that if, for any reason, the seeds were not certified by the Government or if there were any restriction on their sale by the Government and, if for such reason, the defendant was not in a position to fulfil the contract, then the defendant would refund the amount of deposit and would also pay the damages at the rate of Rs.10/- per kilo and the agreement was to be treated as cancelled. He, therefore, contended that, in any case, the defendants were liable to refund the deposit. However, in the present case, it is not the case that the seeds wee not certified by the Government but it appears that the defendants did not receive an intimation that the seeds had been certified by the

government till after the first rain and when the defendants went to offer the delivery of seeds to the plaintiff at Rajkot, the plaintiff refused the same. The clause in question was not intended to apply when the defendants were ready and willing to supply the seeds after they were certified. In the circumstances, the learned Trial Judge has rightly rejected the plaintiff's claim for refunding the deposit. The result is that all the three appeals are dismissed with no order as to costs.

(M.C. Patel, J.)

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